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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,172	03/11/2004	Bernd Aumann	ZAHFRI P604US	7581
20210	7590	08/08/2005	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			LE, DAVID D	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/798,172

Applicant(s)

AUMANN, BERND

Examiner

David D. Le

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/11/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This is the first Office action on the merits of Application No. 10/798,172, filed on 11 March 2004. Claims 9-16 are pending.

### **Documents**

2. The following documents have been received and filed as part of the patent application:
  - Information Disclosure Statement, received on 03/11/04
  - Foreign Priority Document, received on 03/11/04

### ***Claim Objections***

3. Claim 10 is objected to because of the following informalities:
  - Line 8, the first recitation "the electronic control unit (10)" should be --an electronic control unit (10)-- and the second recitation "a electronic control unit (10)" should be --the electronic control unit (10)--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 10-16:

Claims 10-16 provide for the control method of a drive train, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

An example of an active and positive step as follows:

- *Establishing* a position of the driving pedal, a driving speed and a speed of the auxiliary drive on the basis of the position of the selector lever.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 9-16, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U. S. Patent No. 5,509,520 to Evans et al.**

Claims 9-16:

*Evans* (Figs. 1-10; column 2, line 37 – column 7, line 30) discloses an electrohydraulic control device for a drive train comprising:

- An engine (i.e., Fig. 1, element 104);
- A shiftable transmission (i.e., Fig. 1, element 114);

- A hydrodynamic torque converter (i.e., Fig. 1, element 106);
- An auxiliary drive (i.e., column 1, line 33 or column 7, line 16);
- A hydraulic pump for a working hydraulic system (i.e., Fig. 1);
- A pump impeller (i.e., Fig. 1, element 108) of the hydrodynamic torque converter;
- A clutch (i.e., Fig. 1, element 116);
- A selector lever (i.e., Fig. 1, element 136);
- A driving pedal (i.e., column 3, line 42);
- An electronic control unit (i.e., Fig. 1, element 124); and
- Wherein the electronic control unit controls the engine and the clutch in such a manner that, depending on the position of the driving pedal, a driving speed and a speed of the auxiliary drive are established, depending on a position of the selector lever (i.e., column 3, line 21 – column 7, line 11).

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Christensen et al. (U. S. Patent No. 5,720,358) teaches an apparatus and method for controlling the torque of a power train as shown in Figs. 1-2.
- Dietz et al. (U. S. Patent No. 6,234,254) teaches an apparatus and method for controlling the torque of a power train as shown in Figs. 1-2.
- Okada et al. (U. S. Patent No. 5,983,151) teaches a tractive force control apparatus and method for construction equipment as shown in Fig. 1.

Art Unit: 3681


- Anderson et al. (U. S. Patent Application Publication No. US 2005/0131611) teaches a method for maintaining a constant ground speed of a work machine as shown in Figs. 1-2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Le whose telephone number is 571-272-7092. The examiner can normally be reached on Mon-Fri (0700-1530).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ddl

  
CHARLES A. MARMOR  
SUPERVISORY PATENT EXAMINER  
ART UNIT 3681